

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with James D. Withers on 5/26/09.

The application has been amended as follows:

2. In claim 16, line 2, after "acid", please **delete** "(9-isopropyp-1,2,3,4-tetrahydro-1,4-methano-naphthalen-5-yl)-amide.", and **insert** "(9-isopropyl-1,2,3,4-tetrahydro-1,4-methano-naphthalen-5-yl)-amide.".
3. In claim 18, line 2, please **delete** "phytopathogenic microorganisms", and **insert** "fungi".

Response to Arguments

4. Applicant's arguments, in the reply filed 2/19/09, with respect to the rejection of claims 11-12 and 14-16 for non-statutory obviousness-type double patenting have been fully considered and are persuasive. The non-statutory double patenting rejection of claims 11-12 and 14-16 has been withdrawn.
5. In the reply filed on 2/19/09, the Applicants amended claim 17 to replace the term "microorganisms" for "fungi". The specification provides enablement to the amended

Art Unit: 1617

claim. Therefore, the rejection of claim 17 under 35 USC 112, first paragraph, is hereby withdrawn.

Rejoinder of Claims

6. Claims 11-12, and 14-17 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(B), claims 13 and 18, directed to the process of making or using an allowable product and an non-elected species, previously withdrawn from consideration as a result of a restriction requirement, are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

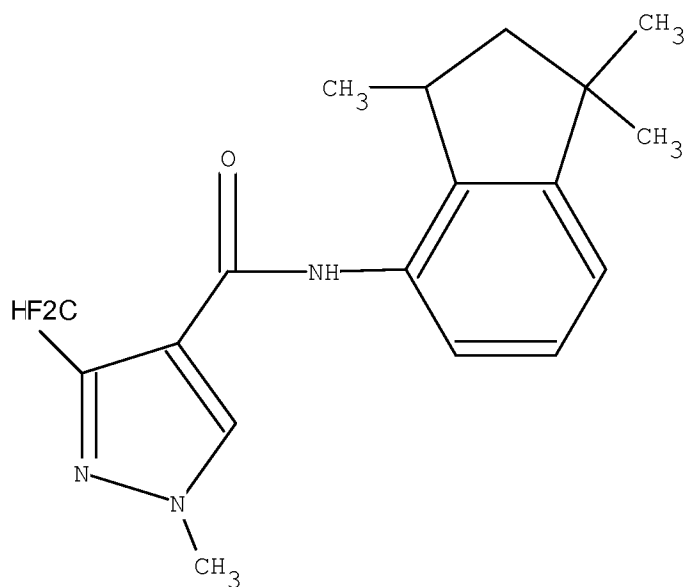
Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, **the restriction requirement as set forth in the Office action mailed on 6/25/08 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Reasons for Allowance

Art Unit: 1617

7. The following is an examiner's statement of reasons for allowance: claims 11-18 are allowable over the prior art as the prior art neither teaches nor suggests the method of controlling or preventing infestation of fungi in plants with the compounds or compositions claimed.

The closest prior art is the US 5,093,347 patent. This patent was submitted on an IDS by the Applicants. The US '347 patent teaches that compounds of the formula shown below are effective fungicidal agents for crops and plants (column 1, lines 15-24, and line 50-column 2, lines 2).



While the compounds taught by the US '347 patent share some structural similarities with those claimed in the instant application, no such suggestion or teachings exist which would lead one of ordinary skill in the art to modify those compounds to arrive at the agents disclosed in this application.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

Art Unit: 1617

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Information Disclosure Statements

8. The information disclosure statement (IDS) submitted on 2/20/2009 were filed after the mailing date of the first office action on 11/19/2008. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

Conclusion

9. Claims 11-18 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARAH PIHONAK whose telephone number is (571)270-7710. The examiner can normally be reached on Monday-Thursday 8:00 AM - 6:30 PM EST, with Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (571)272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

S.P.

/SREENI PADMANABHAN/

Supervisory Patent Examiner, Art Unit 1617